THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.4566 of 2004

Date of Decision: 31 - 8 - 2006

Hukam Singh **.....Petitioner**

v.

Rajinder Singh and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

***

Present: Mr.Alok Jain, Advocate
for the petitioner.

Mr.Anil Rathee, Advocate
for respondent No.1.

Mr.C.B.Goel, Advocate
for respondent No.17.

Mr.Sudhir Aggarwal, Advocate
for respondent Nos.2,5,6 and 9 to 14.

***

P.S.PATWALIA, J.

The present revision petition has been filed challenging order dated 10.9.2004 vide which the learned trial Court dismissed an application seeking amendment of the plaint.

The learned trial Court found that the proposed amendment was totally contradictory to the version of the original plaint and if allowed would amount to withdrawal of an admission. The Court further found that the original averments were supported by a detailed site plan and the proposed amendment relied on a totally different contradictory site plan and if allowed would amount to changing documents attached with the plaint. It was further found that the

applicant by way of application seeking amendment had not prayed for amendment in the prayer clause which could again create a contradiction. It was on these grounds that the amendment was dis-allowed.

I have heard Mr.Alok Jain, learned counsel for the petitioner as also Mr.Anil Rathee, learned counsel for respondent No.2, Mr.C.B.Goel, leaned counsel for respondent No.17 and Mr.Sudhir Aggarwal, learned counsel respondent Nos.2,5,6,9 to 14 and have perused the paperbook.

A perusal of the original plaint which is attached as Annexure P-2 with this petition would show that it is the categoric case of the plaintiffs that in partition proceedings initiated on 4.8.1980 out of 12 Bighas and 18 Biswas of land, 8 Bighas and 3 Biswas towards West was given to the plaintiffs and 4 Bighas 15 Biswas of land towards East was given to defendant No.1. It is further pleaded that out of the remaining 7 Bighas of undivided land, on the basis of a settlement made in the year 1990, 1/3rd share was given to the plaintiffs towards West adjoining their land. The relevant observations in the plaint are as hereunder:-

> "5. That in the partition proceedings initiated on 04-08-1980, out of area of 12 bighas and 18 biswas, (excluding aforesaid requisitioned area), area of 8 bighas 3 biswas of land from the aforesaid Khasra No.3180/2051 to 2057 Min towards West, was given to the plaintiffs and the area of 4 bighas 15 biswas of land towards East of the aforesaid Khasra was given to the defendant No.1. Thus, the de-requisitioned area of 7 bighas of the land of aforesaid Khasra numbers, which was de requisitioned afterwards and possession of the same was delivered to the owners afterwards, remained undivided and un-partitioned.
>
> 6. The later on, the plaintiff No.1 and his brother Inder Singh (father of the plaintiffs No.2 and 3), defendant No.1 and defendant No.2 and sons of defendant no.2, namely, Dalbir and Raj Rishi,

entered into amicable mutual settlement between themselves regarding the area of 7 bighas of undivided land of the aforesaid Khasra numbers which was de-requisitioned after aforesaid partition from the court of Assistant Collector, Ist Grade, Gurgaon and in the said amicable settlement held in the year 1990, 1/3rd share of 7 bighas of undivided and un-partitioned land was given to the plaintiffs towards West adjoining to their land of 8 bighas 3 biswas which was given to them in the partition proceedings and was existing towards the extreme Western side of the aforesaid Khasra numbers, and delivered the possession of the same to the plaintiffs. Thus, since the year 1990, when the said amicable partition by way of settlement between the parties took place, the plaintiffs are coming in continuous occupation and possession of the same and the area of 8 bighas and 3 biswas, which the plaintiffs had got in the earlier partition proceedings initiated on 04-08-1980 and the area of 1/3rd share of the remaining 7 bighas of land, which was got by them in the amicable partition, combined and merged together and is shown in red colour and marked by letters A.B.C.D. In the site plan attached with the plaint. ....."

A reading of the original plaint would show that the plaintiffs have categorically stated that they are in possession of land falling to their share on the West and have supported these averments by a site plan prepared by a Draftsman stated to be drawn after visiting the spot at demarcation of the plaintiffs and is verified to be correct by the plaintiffs.

In the application seeking amendment, now a totally contradictory stand has been taken. Now the petitioner states that in fact the area on the eastern side was allotted to the plaintiffs. The amended para 5 is as hereunder:-

"5. That in the partition proceedings initiated on 04-08-1980, out

of area 12 bighas and 18 biswas, excluding aforesaid requisitioned area, the area of 8 bighas 3 biswas of land from the aforesaid Khasra No.3180/2051 to 2057 Min towards East, which has been later on termed as Khasra No.3180/2051 to 2057/2, was allotted to the plaintiffs and this area is shown in yellow colour and marked by letters E.G.H.I.J.K.F. in the site plan attached with the amended plaint, while the area measuring 4 bighas 15 biswas out of the land of aforesaid Khasra no.3180/2051 to 2057 Min towards West marked H.L.J.I. In green in site plan on termed as Khasra No.3180/2051 to 2057/1 was given to the defendant no.1. The defendants no.2 to 14, including their predecessors, were not given any part of the land out of aforesaid Khasra numbers. The derequisitioned area of 7 bighas of land of aforesaid Khasra numbers, which was not taken into consideration in the partition, as the same was not derequisitioned in favour of the owners, was not taken into consideration in the partition and remained undivided and un-partitioned and the same is shown in blue colour and marked A.D.E.F. in the site plan attached with the amended plaint."

These facts are now sought to be supported by a fresh site plan being totally contradictory to the earlier site plan. Now the plaintiffs claim the eastern side of the property and submit that in case they are not in possession, then a decree for possession be also granted. The only reason given by the plaintiffs for this error is that defendant No.1 is a clever and shrewd person and he in collusion with the revenue officials represented to the plaintiffs that the land had been allotted to them towards West.

In these circumstances I am in agreement with the view taken by the trial Court that there are no good grounds to permit the plaintiffs to take a total somersault and to take a totally contradictory stand in the application seeking

amendment of the plaint. I am of the opinion that in the present circumstances allowing the proposed amendment would amount to withdrawal of admissions made by the plaintiffs without good justification. Still further, it would amount to permitting a fresh site plan totally contradictory to the original site plan on the record. I therefore find no error in the view taken by the trial Court.

For the reasons aforementioned, I find no merit in this revision petition. The same is accordingly dismissed with no order as to costs.

(P.S.PATWALIA)
JUDGE

August 31 , 2006.

RC